SUPPLEMENTAL ACTION

1.   This action corrects the patent number for Link et al., which was incorrectly cited in the office action of 3/18/2009.

Continued Examination Under 37 CFR 1.114

2.   A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/9/2009 has been entered.

Response to Arguments

3.   Applicant's arguments with respect to claims 1-2, 9-10, 12, 21-27, 30-33, 42-50 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5.   Claims 1, 2, 10, 12, 21-23, 26, 27, 30-32 rejected under 35 U.S.C. 103(a) as being unpatentable over Achenson et al. (US 6,477,586) in view of Link et al. (US 6,012,096).

6.   In regard to claim 1, Achenson disclosed a system of using RPC calls for multi-threaded systems. Achenson, column 2, lines 11-14. Achenson disclosed *dispatching a first request from the client to a server, the first request specifying a remote procedure call (RPC)* in column 4,

lines 48-58. Achenson taught *in response to the first request dispatched from the client to the server, receiving a first response from the server, wherein the first response corresponds to a result of the RPC specified by the first request* in column 4, lines 55-65. Achenson disclosed an RPC may be a TCP/IP compliant message. Achenson, column 1, lines 35-37.

7.   Achenson failed to disclose *in response to the received result of the RPC specified by the first response, measuring a time delay from the client's dispatch of the first request to the client's receipt of the first response from the server, wherein the time delay is a number of milliseconds between sending the first request and receiving the first response; appending the time delay to a header of a second request from the client to the server; and dispatching, from the client to the server, the second request with the header, the second request specifying an RPC different from the RPC in the first request.* Link disclosed a method of determining latency in a network. Link calculated the latency between response and request of a packet in column 5, lines 12-43. Link performed this by adding a timestamp to the IP packets sent from the client. Link, column 6, lines 39-43.

8.   Achenson was able to request RPCs in a request sent from the client to the server. Achenson performed this in TCP/IP messages. Link disclosed the calculation of latency between request and response in a network. Link allowed for insertion of time data into a packet before sending to a server. It would have been obvious to one of ordinary skill in the art at the time of invention to combine the latency measurement techniques of Link with the RPC calls of Achenson to calculate the time between the request and response of an RPC call, in order to achieve network efficiency and to calculate where delays were occurring in a network.

9.   In regard to claim 2, Link further disclosed *the client is a messaging client and the server*

is a messaging server. The client and server in Link send requests and responses, making them

messaging client and messaging server.

10.   Claim 10 is substantially the same as claim 1.

11.   Claim 12 is substantially the same as claim 1.

12.   In regard to claim 21, Link further disclosed *the performance data further comprises*

client server communications session invariant performance data context, and the performance

data context comprises at least one performance data context identifier. Link, column 6, lines

19-32.

13.   In regard to claim 22, Link further disclosed *the performance data context further*

comprises one or more of the following: a client computer system host name; a client user name;

a client network adaptor name; a client network adaptor speed; and a client network protocol

address. Link, column 6, lines 19-32.

14.   In regard to claim 23, Link further disclosed *the performance data context further*

comprises one or more of the following: a server computer system host name; a server network

domain name; and a server type. Link, column 6, lines 19-32. Link sent packets from client to

server, which required sending a host address and a destination address to route the packet

properly. This is a client network protocol address and a server computer system host name,

where the server computer system host name is the address of the server computer system, or the

destination address of the IP packet.

15.   In regard to claim 26, Achenson further disclosed *the second request further comprises*

an indication of at least one service desired of the server by the client. The RPC request in

column 4, line 49 includes the identity of a process to respond to the RPC as further disclosed in

Achenson's background, column 1, lines 50-59. The identity of a process is *an indication of at*

least one service desired of the server by the client.

16.   Claim 27 is substantially the same as claim 1.

17.   Claim 30 is substantially the same as claim 1.

18.   In regard to claim 31, Link further disclosed *receiving the second request at the second*

server; parsing the performance data from the second request; and updating, with the

performance data, at least one computer system memory resident performance data accumulator

associated with the first server. Link transmits a request to the server. Link, column 7, lines 33-

36. Link used a remote latency to calculate a current latency in column 7, lines 36-45. The

updated latency is stored in column 7, lines 52-55.

19.   Claim 32 is substantially the same as claim 1. Link disclosed the storage of the

performance data latency. Link, column 7, lines 25-29.

20.   Claims 9 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Achenson in view of Link as applied to claims 1 and 32 above, and further in view of Bradley et

al. (US 7,082,463)

21.   In regard to claim 9, Achenson in view of Link both failed to disclose the use of an email

client or email server. Bradley disclosed a monitoring system similar to Link which detected

maximum message latency. Bradley, column 4, lines 28-34. Bradley emailed the information

about latency. Bradley, column 9, lines 19-27. It would have been obvious to one of ordinary

skill in the art at the time of invention to use Achenson/Link with any type of client and server,

including an email client and server.

22.   In regard to claim 33, Achenson in view of link failed to disclose the use of a maximum

performance data age threshold. Bradley disclosed a monitoring system similar to Link which

detected maximum message latency. Bradley, column 4, lines 28-34. It would have been

obvious to one of ordinary skill in the art at the time of invention to use Achenson/Link with a

maximum message latency to detect when a message has been unavailable to the client for too

long, thus indicating a server failure.

23.   Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Achenson

in view of Link as applied to claim 23 above, and further in view of Lowery et al. (US

7,454,457).

24.   In regard to claims 24-25, Achenson in view of Link failed to disclose providing globally

unique identifiers identified with a client computer operating system process, a client server

communications session, and information regarding a client computer operating system process.

Lowery disclosed a header could include GUID information concerning requests. Lowery,

column 17, Table 1. Lowery, column 18, line 40-60. It would have been obvious to one of

ordinary skill in the art at the time of invention to use the GUIDs for processes with the

Achenson/Link combination to avoid confusion with multiple processes.

Claim Rejections - 35 USC § 101

25.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or
> any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and
> requirements of this title.

26.   Claims 42-50 are rejected under 35 U.S.C. 101 because the claimed invention is directed

to non-statutory subject matter. Claims 42-50 are directed toward a computer storage medium

having a data structure. Claims 42-50 describe the specifics of the data structure. MPEP

2106.01 discloses non-functional descriptive material is a data structure which does not impart

functionality when employed as a computer component, and functional descriptive material is

data structures which impart functionality when employed as a computer component. Claims 42-

50 are not an algorithm, but are a non-functional data structure. The data structure in claims 42-

50 is inoperative; no functionality is imparted to the data structure. The data structure merely

exists. No indication is given of the data structure being used. The data structure does not define

any structural and functional interrelationships between the data structure and other claimed

aspects of the invention which permit the data structure's functionality to be realized. See *In re*

Warmerdam, 33 F.3d 1354, 1360, 31 USPQ2d 1754, 1759 (Fed. Cir. 1994).

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571)272-

3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Vivek Srivastava can be reached on 571-272-7304. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

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information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

                                                        Jeffrey R. Swearingen
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